CITY OF BRIER
Snohomish County, Washington
January 1, 1993 Through December 31, 1993

Schedule Of Findings

1. The City Should Not Tow And Store Vehicles Impounded By Police Authority

Prior to beginning the current audit, the mayor came to us with her concern that the police department, under the former chief of police, acted as an unauthorized "tow operator" by storing vehicles on city property.

We found that, during 1993, at least 66 vehicles were impounded and released in exchange for towing and storage fees of $6,377. Vehicles were impounded by the police under authority given by state law. Because the police department is authorized to impound vehicles, it is prohibited by law from acting as a "tow operator." We saw no evidence that the police chief had approval from the city council to act as a "tow operator," nor was the city registered with the state Department of Licensing to act in this capacity.

RCW 46.55.080, paragraph (5) provides:

> A person who engages in or offers to engage in the activities of a registered tow truck operator may not be associated in any way with a person or business whose main activity is authorizing the impounding of vehicles.

RCW 46.55.010, paragraph (6) provides:

> "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

RCW 46.55.020 requires that:

> A person shall not engage in or offer to engage in the activities of a registered tow truck operator without a current registration certificate from the department of licensing . . . .

We recommend the city not engage in the activities of a registered tow operator.

2. The City Should Not Conduct A Sale Of Impounded And Abandoned Vehicles, Nor Should The City Keep Any Of The Sale Proceeds

As explained in Finding 1, the Brier Police Department acted as a "tow operator" in violation of state law. As part of these activities, the department sold two vehicles in 1993 which were impounded and then abandoned. Proceeds from sale totaled at least $240 in 1993. The city had no authority to conduct the sales and illegally retained the proceeds.

RCW 46.55.130, paragraph (1), states that after certain notice requirements have been met regarding abandoned vehicles:

> . . . the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction . . . .

Paragraph (h) of this statute further provides:

> All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department (of licensing) for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds.

We recommend the city not administer the sale of impounded and abandoned vehicles.

We also recommend the city remit 1993 sale proceeds to the state motor vehicle fund, and that they review sales in previous years and remit those proceeds to the state as well.

3. The City Should Not Seize Private Vehicles And Forfeit Them For Police Use Without Proper Authority Under State Law

Prior to beginning the current audit, the mayor shared with us her concern that the police department inappropriately seized a private vehicle and retained it for police use.

We found that, in 1990, the police department initially impounded a vehicle because the driver had a suspended license. The department then illegally forfeited this vehicle for use in the city's Drug Abuse Resistance Education (D.A.R.E.) program. This forfeiture was done by inaccurately claiming the vehicle had been seized as part of a narcotics arrest. This vehicle was used in the D.A.R.E. program for a time and then later sold according to the current police chief.

RCW 69.50.505, paragraph (4) of the Uniform Controlled Substances Act, says that vehicles are subject to seizure and forfeiture if they are:

> . . . used or intended for use in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) and (2).

These paragraphs in turn describe controlled substances and related materials, products and equipment.

This vehicle had not been used in the manner described above; therefore, the police did not seize this vehicle under the authority of RCW 69.50.505.

We recommend the city comply with the Uniform Controlled Substances Act, and only seize vehicles by that authority when they relate to a narcotics arrest.

We also recommend the city remit proceeds from sale of this vehicle to the state motor vehicle fund, as required when impounded vehicles are sold.

4. The Police Department Should Deposit All Moneys Received With The City Treasurer

Prior to beginning the current audit, the mayor brought us her concern that the police department did not deposit proceeds from the sale of soft drinks with the city treasurer. The mayor was also concerned that the police did not remit donations received for the city's Drug Abuse Resistance Education (D.A.R.E.) program to the city treasurer.

a. We found that the former police chief did enter into a contract with Coca-Cola Enterprises, to sell soda from one of their machines on city property. According to the mayor, soda was sold in this manner from October 1988 through June 1992. However, we found that the city did not purchase any of the inventory for resale. It is presumed that soda was purchased for resale with private funds or the proceeds of previous sales. None of the proceeds from soda sales were deposited with the city treasurer, and there is no record of the use of those funds.

   We could not find where any public funds were used to buy soda inventory. This is evidence of poor control over fund raising activities for the city. In this case, since the former police chief, in his official capacity, made a contract with Coca-Cola Enterprises for sale of their product on city property, this fund raising activity should have been conducted under city control.

   We recommend the city establish strong internal accounting controls over all fund raising activities. Sale of soda should include at a minimum, restricting access to inventory to authorized personnel, two staff members collecting and counting cash from soda machines, conducting monthly inventory counts of soda on hand, and monthly reconciliations of actual versus expected cash receipts. A format for such a reconciliation is available for management review.

b. We also found that the former police chief received at least $1,100.47 in donations for the city's D.A.R.E. program. This money was not immediately deposited with the city treasurer. In fact, the chief spent $973 of this total, as evidenced by money order receipts. Money orders were purchased and disbursed outside the control of the city treasurer. Money orders made payable to D.A.R.E. America totaled $420, presumably to buy merchandise to be given away at schools or sold at fundraisers. There is no indication of who was paid with the other $553 of money orders. The remaining $127.47 in cash was not deposited with the treasurer until early 1994.

Article XI, Section 15 of the Washington State Constitution requires:

> All moneys, assessments and taxes belonging to or collected for the use of any county, city, town or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depositary to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they belong.

The police chief was also given written guidelines in October 1988, explaining how donations for the D.A.R.E. program should be handled to ensure deposit with the administration department.

Without adequate controls over donations received for D.A.R.E., the city cannot ensure that all donations are accounted for, and used in accordance with program guidelines and city budget limitations.

We recommend the police department account for all money received and deposit all receipts with the city treasurer in a timely manner.

5. The City Should Comply With The State Public Records Act

The city received several requests to review public records during 1994. We reviewed the city's response to these requests, and found that some of those responses, as well as their recent policy on public records, do not comply with the state Public Records Act.

In the declaration of public policy, RCW 42.17.010, paragraph (11) provides:

> That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

a. On April 4, 1994, a citizen asked to review a summary of claims warrants (expenditures) for 1993, and for January and February 1994. The assistant city attorney responded in writing by stating that the city clerk/treasurer would:

> > . . . have to review each claim listed for the periods of time requested to see whether a particular item listed on a summary is subject to public disclosure.

The assistant city attorney then requested this citizen deposit $800 with the city, in advance of the staff compliance with the request, to cover city staff time to perform such a review. Further, the attorney stated that the actual cost for staff to comply with the records request may reach $1,500, and that this citizen would have to pay the entire actual cost before such records would be released.

RCW 42.17.300 states that:

> No fee shall be charged for the inspection of public records. Agencies may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying.

Further, AGO 1991 No.6, page 2, states that the above statute:

> prohibits any agency from imposing a charge for searching for and retrieving public records.

We consulted with the Attorney General's Office and were assured that summaries of claims warrants are public records in Washington State.

When the city denies a citizen's request to review public records, they deny all citizens' the right to hold government accountable for their actions and decisions.

We recommend the city allow citizens access to all public records.

We also recommend the city charge fees only for copying public records, in accordance with state law.

b. We reviewed City Ordinance 271 (5/94) relating to public records and found that Section 7 of this ordinance says the city may:

> require a deposit to cover the actual cost of staff time necessary to monitor review of the files.

As explained above, RCW 42.17.300 states that:

> No fee shall be charged for the inspection of public records . . . .

Such a policy may restrict citizens' access to the records which are open to them in accordance with state law, by charging fees which are not permitted by statute.

Upon notifying the city of this condition, the council amended Ordinance 271, Section 7, to delete reference to a charge for staff time necessary to monitor review of files. The amendments consisted of Ordinances 271A and 271B, approved by council November 1, 1994, and December 6, 1994, respectively. These amendments also deleted the requirement for a deposit to cover staff time referred to above. However, this policy was in effect between May 17, 1994, and the date of these amendments, during which time city management did not fully comply with state law when responding to public records requests, as mentioned in sections a. and c. of this finding.

c. On April 4, 1994, this citizen also requested a copy of the "retainer agreement" between the city and their attorney. The assistant city attorney responded by saying that he had not seen such an agreement; however, he said that if this agreement exists it is:

> exempt from public disclosure as such an agreement contains personal information the disclosure of which would violate the appointed City Attorney's right to privacy.

RCW 42.17.255 states that:

> A person's "right to privacy" . . . is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public . . . .

We consulted with the Attorney General's Office, and we were assured that such an agreement is a public record in Washington State. City staff informed us that this agreement does in fact exist. However, this citizen did not receive a copy of the agreement until placing a new request on December 5, 1994.

<u>We recommend</u> the city allow citizens access to all public records in a timely manner.